1867-009 Chancery Causes: William Woodward &c vs. Henry J. Morgan &c
Lee Co.

Hamblin, Long, Ely, Mark, Turner, Poteet, Fitts, Richmond,
Richmond 6 Bro]

CA-Debt
T-Property

To the Hon. John A. Campbell, Judge of the Circuit Court of Lee County Virginia, the Bill of Complaint of William Woodard and ~~William~~ John Hamblin most respectfully showeth:

That on the day of 186, one Richard M. Hamblin, administrator of the estate of James S. Long dec'd made public sale of his intestates property; and at the said sale one John W. M. Ely bought property to a considerable amount. Bond and security was required of the purchasers of said property; and your orator Woodard thereupon became the security of the said Ely for the payment of $ 90.00 to the said administrator months after the date of said sale and he and the said Ely executed and delivered to the said administrator their bond or note therefor. And your orator Hamblin at the same time in like manner became the security of the said Ely for the payment of $ 136.85, to the said administrator months after the date of said sale, and he and the said Ely executed and delivered to the said administrator their bond or note therefor. The said debts, for which your orators are security in the manner aforesaid, are now due and wholly unpaid in principal or interest; and your orators are liable to pay the same, that is, they are severally liable to pay the separate sums for which they became security as aforesaid.

Shortly after the said administrator's sale, the said John W. M. Ely became and from thence hitherto has been and still is insolvent and wholly unable to pay the said debts, and nothing can now be made out of him by ~~fieri facias~~ execution at law. Your orators, shortly after they became security as aforesaid, discovered the failing circumstancy of the said Ely, and the said Ely himself ~~proposed to secure your orators by deed of trust on his property~~ and made application to your orators by deed of trust on his property. And thereupon the said Ely, on the 20 day of

January 1867, made and executed his deed of trust by which he conveyed to one William Turner as trustee certain property therein mentioned to secure and indemnify your orators in their said securityship and to save them harmless therefrom, and also to secure the payment of a debt of some $ 250.00 to Adaline Marks, and interest thereon. A certified copy of this deed of trust is herewith filed, marked "A" as a part of this Bill, the original thereof being and remaining on file in a certain suit now pending on the equity side of this Court wherein David Poteet adm. of Cornelius Fitts dec'd is plaintiff, and your orators and others are defendants. A considerable amount of property appears to have been conveyed in the said deed, but your orators state that the real amount of property owned by the said Ely and actually conveyed by said deed was really much less than stated in said deed, and was not more than sufficient to pay the debts therein mentioned. Your orators did not know and had no means of knowing what property the said Ely had, and they reasonably supposed he owned all the property mentioned by him in the said deed, but they have since ascertained that such is not the case. The said Ely was suffered to remain in possession of this property, and has without the knowledge or Consent of your orators or the said trustee sold and disposed of much thereof; he has sold the bacon and lard in the trust mentioned or such thereof as he had, to Marion D. Richmond and James B. Richmond, merchants and partners in trade under the name & style of Richmond & Bro. who now owe him therefor the sum of $106.80. This is nearly all the trust property or its proceeds that will be available for the payment of the said debts; and your orators are advised that by the execution of the said deed of trust, they acquired a lien on the said bacon and lard for their security and indemnity against the payment of the said debts, and that the subsequent sale thereof by Ely, without their knowledge or Consent, would not defeat or displace this lien, and that the lien would in equity follow and attach upon the proceeds of the sale of the said bacon and lard in whose hands soever found, as against the said Ely and his creditors.

Your Orator further states that afterwards, to-wit, on the 18 day of April 1867, one Henry J. Henry Lewis Smith deputy Sheriff for James W. Orr Sheriff of Lee County, issued out of the Clerk's office of the County Court of said County a Summons, directed to the said Sheriff, Reciting that he the said Smith had in his hands for Collection sundry fee bills against the said Ely due and payable to Henry J. Morgan in his character of Clerk and Commissioner in Chancery, amounting in the aggregate to $ 84.99, and that the said Smith, after diligent search had been unable to find property of the said Ely on which to distrain and had demanded payment thereof from the said Marion D. Richmond and James B. Richmond, merchants &c aforesaid, and had been refused — which said Summons Commanded the said Sheriff to summon the said Richmonds to appear before the Justices of the County Court of said County on the first day of the then next May term to answer of and Concerning their indebtedness to the said Ely and further to do and perform what the said County Court should in that behalf Consider. This said Summons was executed on the said Richmonds about 3 O'clock P.M. on the 18th day of April 1867 by the said Smith, and on the 20th day of May 1867, the said Richmonds endorsed on the said Summons in writing that at the time of the service of the same, they were indebted to said Ely in the said sum of $ 106.80, and subscribed their said firm name thereto. Thereupon the said County Court at its said May term 1867 made an order that the said Richmond & Bro. should pay the said

the said sum of $14 to the said Henry J. Morgan, the amount of the said fee-bills, to-wit $84.99, interest thereon and the costs. An attested office copy of the said summons and the endorsements thereon, marked "B" and also an attested office copy of the said order of the said County Court on the said Richmonds, marked "C" are each herewith filed as parts of this Bill. Under and by virtue of this order of the said County Court the said Henry J. Morgan claims that he has a lien on the said fund in the hands of the said Richmonds from the date of the service of the said summons, and is now seeking to collect the same. Your orators insist that they have a prior lien on this same fund by virtue of the said deed of trust, and that, if the said Henry J. Morgan is permitted to recieve and collect the same under the said County Court order, they will sustain an irreparable loss and injury as the said Ely is now hopelessly insolvent. And they furthermore state that the said Richmonds will be compelled to pay the amount in their hands as by the said order they are directed, unless restrained by your Honor's injunction from so doing until the conflicting claims of your orators and of one David Poteet administrator of Cornelius Hiltz dec'd hereinafter mentioned and the said Henry J. Morgan, in regard to the said fund can be settled and adjudicated.

Your orators know nothing about the said debt of about $250.00 and interest mentioned in the said deed of trust as being due from the said Ely to the said Adaline Mark; they know nothing as to how or when or for what the same was contracted; nor do they know how much or whether any thing has been paid thereon since or before the execution of the said deed of trust. But as to these facts they pray for a discovery. *

Your orators being without adequate remedy at law, their prayer therefore is that the said John W. M. Ely, Adaline Mark, William Turner, Henry J. Morgan, Richard M. Hamblin, edwards, of the estate of James S. Long deceased and the said Richmonds and the said David Poteet, administrator of the estate of

Cornelius Stitts, deceased, and the said Marian S. Richmond and James B. Richmond, Merchants and partners &c. as aforesaid, be each and all made parties defendant to this Bill of Complaint and be compelled to answer the same fully on oath; that the said Ely and Mark be compelled to make discovery of the matters and things above prayed for in regard to the said debt of about $250.00 and interest; that the said Ely be required farther to discover and state where any and all the property is that was conveyed by him in the said deed of trust, and what has become of the same, and when to whom and for what he has sold the same or any of it; and that, finally, the conflicting claims of the parties above named in regard to the said fund in the hands of the said Richmonds be settled and adjudicated by decree of your Honor. And in the mean time, they pray that your Honor will by injunction restrain and inhibit the said Henry J. Morgan ~~and Lewis Smith, and each of them~~, from receiving or collecting or from causing to be recieved or collected, and will likewise restrain and inhibit the said Marian S. Richmond and James B. Richmond and each of them from paying over the said fund of $106.80 in their hands as aforesaid, the said Richmonds' until the further order of your Honor in the premises. They pray for such general and special relief as may be suited to the nature of their case and consist with equity - and for the Commonwealth's writ of Summons &c.

Rose. for Compltts.

Virginia Lee County to-wit:

Personally appeared William W. Woodard before me H. Wm. Hall a Justice of the Peace for said County and made oath that the facts stated in the foregoing bill are true to the best of his knowledge information & belief. This September 16th 1867.

H. Wm Hall J. P.

* Your orators further state that one David Patent administrator of the estate of Cornelius Fitts dec'd also claims a lien on this fund by virtue, as he alledges of the lien of a fieri facis issued by the clerk of the County Court of said County upon a judgment for the sum of $ in favor of the said Patent, admr &c, against the said Eby and others; and that the said Patent has filed his Bill and brought his suit on the equity side of this Court (which is the suit hereinbefore mentioned) for the purpose of enforcing his said supposed lien acquired by the said fieri facias; and that he is by the said suit in equity seeking to collect the said debt of $106.80 off of the said Richmond. Your orators state that the said Patent's lien (if any he have) was not only acquired subsequent to the lien of your orators acquired as aforesaid, but the same, that is, the lien of the said Patent by virtue of his said fieri facias has long since been lost and discharged. The said fieri facias issued against the said Eby and others, and was actually lined on property of value sufficient to satisfy the same; and thereupon the execution debtors executed & delivered to the officer having the property in his custody, a forthcoming bond, with a good and solvent security for the doing of the said property at the time and place of sale. This bond has been forfeited; and your orators are advised that the lien of the said fieri facias was thereby discharged, and that the said Patent must hereafter seek his remedies on his said forfeited forthcoming bond. All which will be fully seen by the pleadings and proceedings in said suit, (reference being thereto had) now remaining on file in this Honorable Court

Woodard & Hamblin

vs. } Bill in Chancy.

Henry J. Morgan & others

Woodard & Hamblin
vs
Henry J. Morgan & others } In Chancy.

The plaintiffs in this case having exhibited to the Court their Bill of Complaint which is sworn to against Henry J. Morgan and others, praying for an injunction to restrain James B. Richmond and Marian D. Richmond Merchants and partners in trade ~~from~~ under the name and style of Richmond & Bro. from paying over the sum of $106.80 in their hands, and also to restrain the said Henry J. Morgan and David Poteet, admr of the estate of Cornelius Tilly dec'd from collecting or causing the same to be collected until the future order of the Court — the Court doth therefore order that an injunction be granted according to the prayer of the Complainants Bill — But this ~~order~~ injunction is not to take effect unless and until the Complainants in the said bill shall execute bond in the penalty of $225.00 conditioned as required by law —

Woodard v Hamblin

Decretal order -

Henry J. Morgan Solr

Enter this decree
J. A. C.
Sept 18. 1867